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SUBJECT: USEB 039: IRAQI INTERIM GOVERNMENT DECREE ON THE
DEFENSE OF THE NATIONAL SECURITY

1. (U) SUMMARY. THE IRAQI INTERIM GOVERNMENT (IIG) ENACTED A DECREE ON THE DEFENSE OF NATIONAL SECURITY TODAY. THE LAW IS AIMED AT BETTER COMBATING THE INSURGENCY WHILE MAINTAINING BASIC RESPECT FOR HUMAN RIGHTS. THE LAW COMPLIES WITH ALL ASPECTS OF THE TRANSITIONAL ADMINISTRATIVE LAW (TAL), WHICH IS EQUIVALENT TO AN IRAQI BILL OF RIGHTS. POST PROVIDES COMMENTS ON THE LAW AND THE FULL TEXT OF THE LAW BELOW. END SUMMARY.

2. (U) ON WEDNESDAY, JULY 7, 2004, THE IRAQI INTERIM GOVERNMENT PASSED A DECREE ON THE DEFENSE OF NATIONAL SECURITY. POST'S VIEW IS THAT THE LAW IS NOT DESIGNED TO GRANT THE IIG VAST ADDITIONAL POWERS. TO THE CONTRARY, MOST OF WHAT THE DRAFT PERMITS COULD ALREADY HAVE BEEN DONE UNDER EXISTING IRAQI LAW. THE DRAFT SERVES AS AN OMNIBUS ORDER, CONSOLIDATING IRAQI PROCEDURES WITHIN A RULE OF LAW FRAMEWORK FOR READY USE IN THE EVENT OF AN EMERGENCY. THE IIG AS SOON AS IT WAS FORMED SIGNED AN INTEREST IN SUCH AN ACT TO WORK WITH CPA AND US TO ENDEAVOR THAT THE FINAL DRAFT COMPORTED WITH HUMAN RIGHTS STANDARDS UNDER BOTH THE TAL AND INTERNATIONAL LAW. POST VIEWS THE OUTCOME AS FAVORABLE. HIGHLIGHTS OF THE LAW FOLLOW IN PARAGRAPH 3 AND THE FULL TEXT OF THE LAW AS TRANSLATED BY THE U.S. EMBASSY IS IN PARAGRAPH 4.

3. (U) HIGHLIGHTS.

-- THE DECREE IS NOT SELF-EXECUTING. BOTH THE PRIME MINISTER AND THE PRESIDENCY (UNANIMOUS VOTE OF THREE PERSONS) MUST DECLARE AN EMERGENCY CONDITION FOR THE DECREE TO HAVE EFFECT.

-- THE DEFINITION OF "EMERGENCY CONDITION" LIMITS APPLICATION TO A CONTINUOUS, SUSTAINED CAMPAIGN OF VIOLENCE IN A PARTICULAR PART OF IRAQ THAT THREATENS THE PERSONAL SAFETY OF IRAQIS. AN EMERGENCY CONDITION DOES NOT AUTOMATICALLY APPLY NATIONWIDE.

-- ANY DECLARED EMERGENCY CONDITION AUTOMATICALLY SUNSETS AFTER 60 DAYS AND EVERY 30 DAYS THEREAFTER UNLESS REAFFIRMED BY THE PRIME MINISTER AND THE PRESIDENCY.

-- ALL SEARCHES AND SEIZURES MUST COMPORT WITH THE TAL AND THUS REQUIRE JUDICIAL AUTHORIZATION IN THE ABSENCE OF EXTREME EXIGENT CIRCUMSTANCES.

-- ALL DETAINEES MUST BE BROUGHT BEFORE A JUDGE WITHIN 24 HOURS, CONSISTENT WITH THE IRAQI CODE OF CIVIL PROCEDURE.

-- ALL EXECUTIVE DECISIONS, INCLUDING THE DECISION TO DECLARE AN EMERGENCY, ARE SUBJECT TO JUDICIAL REVIEW AND OVERSIGHT BY THE NATIONAL COUNCIL.

-- TO THE EXTENT NEW POWERS OR PROCEDURES ARE AUTHORIZED, THEY APPLY ONLY IN AREAS OF A DECLARED EMERGENCY AND EXPIRE AFTER THE EMERGENCY.

SUCH NEW POWERS AND PROCEDURES INCLUDE:

-- LIMITED CONTROLS ON MOVEMENT, TRAVEL RESTRICTIONS, AND EXPLICIT AUTHORIZATION TO ORDER CURFEWS FOR A FIXED PERIOD OF TIME.

-- CLOSING OR RESTRICTING ACTIVITIES OF PRIVATE ORGANIZATIONS, UNIONS AND ASSOCIATIONS, AFTER OBTAINING A COURT ORDER.

-- ABILITY TO ENGAGE IN COVERT SURVEILLANCE MEASURES UPON JUDICIAL AUTHORIZATION.

-- ESTABLISHMENT OF A UNIFIED CHAIN OF COMMAND FOR IRAQI SECURITY FORCES, ALL OF WHOM WILL REPORT DIRECTLY TO THE PRIME MINISTER OR HIS DESIGNEE.

-- BROAD POWER TO DELEGATE ENFORCEMENT AUTHORITY FROM THE PRIME MINISTER TO CIVILIAN OR MILITARY OFFICIALS WHERE NECESSARY.

-- AUTHORITY TO ORDER THE ISOLATION AND ENCIRCLEMENT OF AREAS EXPERIENCING WIDESPREAD INSURRECTION.

-- AUTHORITY GRANTED TO THE PRIME MINISTER, WITH PRESIDENCY APPROVAL, TO GRANT PARDONS AND IMMUNITY.

THE FORMER REGIME HAD SUCH POWERS BUT THEY WERE NOT ESTABLISHED IN WRITING, THEY WERE AVAILABLE AT ALL TIMES, AND THEY WERE SUBJECT TO ARBITRARY ENFORCEMENT.

-- THE DECREE REAFFIRMS THE IIG'S COMMITMENT TO CARRYING OUT ELECTIONS BY JANUARY 1995, SAYING "IT IS NOT PERMISSIBLE TO USE ANY PROVISIONS OF THIS ORDER TO DELAY

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IONS UNDER 1546,
OR IRAQI SECURITY FORCES OPERATING UNDER UNIFIED MNF-I
COMMAND.

14. (U) BEGIN TEXT OF EMERGENCY LAW.

REPUBLIC OF IRAQ
OFFICE OF THE PRIME MINISTER

ORDER OF SAFEGUARDING NATIONAL SECURITY
NUMBER () FOR THE YEAR 2004

IN THE NAME OF THE PEOPLE.

ACCORDING TO THE PROVISIONS OF SECTION 2 OF THE TRANSITIONAL ADMINISTRATIVE LAW ANNEX, AND ACCORDING TO THE PROVISIONS OF ARTICLE 25 OF THE ABOVE-MENTIONED LAW, AND CONSISTENT WITH THE PROVISIONS OF CHAPTER TWO OF THIS LAW, WE PROMULGATE THE FOLLOWING ORDER.

ARTICLE ONE

THE PRIME MINISTER, WITH THE UNANIMOUS APPROVAL OF THE PRESIDENCY COUNCIL, MAY DECLARE A STATE OF EMERGENCY IN ANY PART OF IRAQ UPON THE EXPOSURE OF THE PEOPLE OF IRAQ TO A DANGER OF GRAVE PROPORTIONS, THREATENING THE LIVES OF INDIVIDUALS AND EMANATING FROM AN ONGOING CAMPAIGN OF VIOLENCE BY ANY NUMBER OF PEOPLE, FOR THE PURPOSE OF PREVENTING THE ESTABLISHMENT OF A BROAD BASED GOVERNMENT IN IRAQ, OR TO HINDER THE PEACEFUL PARTICIPATION OF ALL IRAQIS POLITICAL PROCESS, OR FOR ANY OTHER PURPOSE.

ARTICLE TWO

A STATE OF EMERGENCY SHALL BE DECLARED BY AN ORDER EXPLAINING THE REASONS FOR WHICH THE STATE OF EMERGENCY WAS DECLARED, AS WELL AS A DEFINITION OF THE AREA IT COVERS, AND THE DEFINITION OF THE START OF THE STATE OF EMERGENCY AND ITS DURATION, PROVIDED THAT THE STATE OF EMERGENCY SHALL NOT EXTEND BEYOND 60 DAYS OR BEYOND THE ELIMINATION OF THE DANGER OR CIRCUMSTANCES THAT CALLED FOR ITS DECLARATION, WHICHEVER COMES FIRST. THE DURATION OF STATE OF EMERGENCY MAY BE PERIODICALLY EXTENDED, EVERY THIRTY DAYS 30 DAYS AS NECESSARY BY WRITTEN DECLARATION FROM THE PRIME MINISTER AND THE PRESIDENCY COUNCIL, AND IT SHALL AUTOMATICALLY CEASE TO BE EFFECTIVE, IF NOT EXTENDED IN WRITING, AT THE END OF ANY EXTENSION PERIOD.

ARTICLE THREE

THE PRIME MINISTER, DURING A STATE OF EMERGENCY AND WITHIN THE LIMITS OF THE AREA WHERE SUCH A STATE OF EMERGENCY IS DECLARED, IS EMPOWERED WITH THE FOLLOWING INTERIM EXTRAORDINARY AUTHORITIES.

FIRST: AFTER THE ISSUANCE OF AN ARREST WARRANT OR A SEARCH WARRANT, EXCEPT IN EXTREME EXIGENT CIRCUMSTANCES, RESTRICTIONS MAY BE IMPOSED ON THE FREEDOMS OF THE CITIZENS OR THE FOREIGNERS IN IRAQ IN THE INSTANCES OF WITNESSED CRIMES OR ACCUSATIONS SUPPORTED BY EVIDENCE OR CREDIBLE SUSPICION IN THE AREAS OF TRANSPORT, MOVEMENT, ASSEMBLY, GATHERING, PASSAGE, TRAVEL FROM AND TO IRAQ, THE CARRYING OR USE OF WEAPONS AND AMMUNITION OR HAZARDOUS MATERIALS; THOSE WHOSE BEHAVIOR IS SUSPICIOUS CAN BE DETAINED, SEARCHED AND THEIR HOMES AND PLACES OF EMPLOYMENT CAN BE SUBJECT TO SEARCH. THE PRIME MINISTER SHALL DELEGATE THESE OR OTHER POWERS TO THOSE HE CHOOSES AMONG MILITARY OR CIVILIAN OFFICIALS.

SECOND: IMPOSE CURFEW DURING A DETERMINED SHORT PERIOD OF TIME ON THE AREA THAT IS FACING A DANGEROUS SECURITY THREAT, SEEING EXPLOSIONS, UNREST AND LARGE SCALE ENEMY ARMED OPERATIONS; HE MAY ISOLATE SUCH AREA, CORDON IT OFF WITH APPROPRIATE FORCES AND SEARCH IT WHEN THERE IS PROOF OR SUSPICION THAT SOME OF ITS INHABITANTS POSSESS MEDIUM OR HEAVY WEAPONS, EXPLOSIVES OR WHEN OUTLAWS SEEK REFUGE THEREIN AND AFTER A SEARCH WARRANT IS ISSUED, EXCEPT IN EXTREME EXIGENT CIRCUMSTANCES.

THIRD: IMPOSE RESTRICTIONS ON ASSETS AND PROHIBITED POSSESSIONS; PUT A PREVENTIVE FREEZE ON THE ASSETS OF THOSE ACCUSED OF CONSPIRACY, INSURGENCY, ARMED DISOBEDIENCE, ARMED UNREST, KILLINGS, BOMBINGS AND ON THE ASSETS OF WHOEVER PARTICIPATES OR COOPERATES WITH THEM IN ANY WAY IN THE COMMISSION OF THESE CRIMES OR INCITES THEM AND WHEN CRIMES ARE COMMITTED AS A RESULT OF SUCH INCITEMENT, INCLUDING THOSE WHO OFFER THEM HOMES OR PLACES TO STAY OR GATHER FULLY AWARE OF THEIR INTENTIONS. HE MAY DETAIN THOSE ACCUSED OF THESE CRIMES WHENEVER THERE IS SUFFICIENT LEGAL

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AND TO ALL WIRED AND WIRELESS COMMUNICATION MEANS AND EQUIPMENT IF THERE IS EVIDENCE THEY WERE USED IN THE ABOVE-MENTIONED CRIMES. HE MAY IMPOSE MONITORING OF THESE MEANS AND EQUIPMENT AND SEARCH AND SEIZE THEM IF THAT COULD LEAD TO THE UNCOVERING OF THE ABOVE-MENTIONED CRIMES OR PREVENT THEIR OCCURRENCE, AND THAT IS ONLY AFTER OBTAINING A WARRANT FROM THE CONCERNED JUDICIAL AUTHORITIES FOR A DETERMINED PERIOD OF TIME.

FIFTH: IMPOSE RESTRICTIONS ON THE MEANS OF TRANSPORTATION BY LAND, AIR AND SEA IN SPECIFIC AREAS AND FOR DETERMINED PERIODS OF TIME.

SIXTH: IMPOSE RESTRICTIONS ON PUBLIC AND COMMERCIAL PLACES, CLUBS, ASSOCIATIONS, UNIONS, COMPANIES, ESTABLISHMENTS AND OFFICES, BY LIMITING THEIR HOURS OF OPERATIONS AND BY MONITORING THEIR ACTIVITIES AND PLACING THEM UNDER GUARD AND DISBANDING THEM OR SUSPENDING THEM TEMPORARILY IF THERE IS EVIDENCE OF THEIR CONNECTION TO THE CRIMES MENTIONED IN PARAGRAPH (FIRST) OF ARTICLE 7, BUT ONLY AFTER GETTING A COURT ORDER.

SEVENTH: TO SUSPEND TEMPORARILY OR PERMANENTLY THE EFFECTIVENESS OF LICENSES, POSSESSION OR TRADING OF WEAPONS AND AMMUNITION, AS WELL AS DANGEROUS MATERIALS AND EXPLOSIVES, IF IT IS PROVEN THAT THEY WERE USED OR ATTEMPTED TO BE USED IN THE CRIMES MENTIONED ABOVE, OR IN THE EVENT THAT THEY REPRESENTED A THREAT TO THE SECURITY AND STABILITY OF THE AREA, OR WHEN THEIR POSSESSION IS LEGALLY PROHIBITED.

EIGHTH: TO COMMENCE LIMITED AND APPROPRIATE, SPEEDY MILITARY AND SECURITY DECISIONS AND MEASURES, IN AREAS WHERE THE STATE OF EMERGENCY WAS DECLARED, IN COORDINATION WITH THE MINISTERS OF DEFENSE AND INTERIOR OR ANY OTHER MINISTER AS WELL AS WITH THE NATIONAL SECURITY ADVISOR OR ANY COMPETENT ENTITY.

NINTH: DURING LARGE SCALE OPERATIONS, CARRIED OUT IN ORDER TO CONFRONT GREAT ARMED THREATS IN LARGE AREAS, IT SHALL BE POSSIBLE TO SEEK THE ASSISTANCE OF MULTINATIONAL FORCE, IN ACCORDANCE WITH THE UNITED NATIONS SECURITY COUNCIL RESOLUTION 1546 FOR THE YEAR 2004, AND TO TASK THE IRAQI ARMED FORCES, WITH THE UNANIMOUS APPROVAL BY THE PRESIDENCY COUNCIL, WITH CLEAR AND SPECIFIC TASKS THAT ARE APPROPRIATE TO THEIR SITUATION AND CAPABILITIES. THE EXTRAORDINARY MEASURES SHALL BE IMPLEMENTED IN THE REGION OF KURDISTAN, IN COORDINATION WITH ITS GOVERNMENT.

ARTICLE FOUR

DECISIONS AND ORDERS ISSUED FOR THE ARREST OR DETENTION OF PERSONS, OR THE SEIZURE OF ASSETS, PURSUANT TO THE PROVISIONS OF THIS LAW, SHALL BE PRESENTED TO THE INVESTIGATIVE JUDGE, ON THE CONDITION THAT THE ACCUSED IS BROUGHT TO STAND BEFORE THE INVESTIGATIVE JUDGE WITHIN (24) HOURS FROM THE EXECUTION OF SUCH DECISIONS AND ORDERS.

ARTICLE FIVE

FIRST: THE PRIME MINISTER SHALL EXERCISE THE EXTRAORDINARY AUTHORITIES PROVIDED FOR ABOVE, IN ACCORDANCE WITH WRITTEN ORDERS OR NOTICES OR WRITTEN STATEMENTS DISSEMINATED IN PRINTED, VISUAL AND AUDIO MEDIA, SPECIFYING THE DATE OF EFFECTIVENESS AND ITS DURATION.

SECOND: WITHOUT INFRINGEMENT ON ANY GREATER PUNISHMENT STIPULATED BY CRIMINAL LAW AND LAWS IN EFFECT, VIOLATION OF THE ORDERS, STATEMENTS, DECLARATIONS OR DECISIONS ISSUED BY THE PRIME MINISTER OR HIS DESIGNATE, SHALL BE PUNISHABLE BY IMPRISONMENT FOR A PERIOD NOT EXCEEDING THREE YEARS AND A FINE NOT EXCEEDING ONE MILLION DINARS OR ONE OF EITHER OF THESE PUNISHMENTS.

ARTICLE SIX

THE ARMED FORCES, EMERGENCY FORCES, SPECIAL FORCES, CIVIL DEFENSE FORCES, INTERNAL SECURITY FORCES, AND THE SECURITY, INTELLIGENCE AND MILITARY INTELLIGENCE SERVICES IN THE AREA WHERE A STATE OF EMERGENCY IS DECLARED, SHALL REPORT DIRECTLY TO THE PRIME MINISTER, DURING THE PERIOD OF THE DECLARED STATE OF EMERGENCY, AND IN COORDINATION WITH THE COMMANDERS OF SUCH FORCES AND SERVICES, THE PRIME MINISTER MAY TASK ANY OF THEM WITH TASKS APPROPRIATE IN NATURE AND JURISDICTION AND THE REQUIREMENTS OF THE EMERGENCY CIRCUMSTANCES.

ARTICLE SEVEN

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DURING THE PERIOD OF THE STATE OF EMERGENCY, AND WHICH ARE REFERRED BY A JUDGE OF JURISDICTION INCLUDING CRIMES OF MURDER, ROBBERY, RAPE, KIDNAPPING, DESTRUCTION, BOMBING OR BURNING OR DAMAGING OF PUBLIC AND PRIVATE PROPERTY AND POSSESSION OF MILITARY WEAPONS AND THEIR AMMUNITION, OR THE MANUFACTURING, TRANSPORTATION, SMUGGLING OR TRADING OF SUCH WEAPONS.

SECOND: OTHER CRIMES NOT SPECIFIED IN THE ABOVE PARAGRAPH, OR CRIMES REFERRED BY A JUDGE OF JURISDICTION, SHALL BE THE SPECIALTY OF THE CRIMINAL COURTS, WITHIN THEIR GEOGRAPHICAL JURISDICTIONS.

THIRD: INVESTIGATIVE JUDGES, IN ACCORDANCE WITH THEIR GEOGRAPHICAL AND QUALITATIVE JURISDICTIONS, SHALL IMMEDIATELY COMMENCE INVESTIGATIONS OF THE ABOVE MENTIONED CRIMES, AND THE CHIEF OF THE JUDICIAL COUNCIL OR THE CHIEF JUDGE OF THE SUPREME FEDERAL COURT, ONCE IT IS ESTABLISHED, MAY DELEGATE, WHENEVER IT IS DEEMED NECESSARY, OTHER APPROPRIATE JUDGES AND INVESTIGATORS INSTEAD OF THE INVESTIGATIVE JUDGES, OR IN ADDITION TO THEM TO INVESTIGATE A CRIME OR A PARTICULAR VARIETY OF CRIMES.

FOURTH: THE PROVISIONS OF THE CRIMINAL CODE AND THE CODE OF CRIMINAL PROCEDURES, SHALL APPLY TO THE CRIMES REFERRED TO

IN THE FIRST AND SECOND PARAGRAPHS OF THIS ARTICLE.

ARTICLE EIGHT

THE PRIME MINISTER, WITH THE APPROVAL OF THE PRESIDENCY COUNCIL, CAN ORDER THE WITHDRAW OF A COURT CASE AND THE RELEASE OF THE ACCUSED BEFORE THEIR JUDGMENT PRIOR TO THE CASE BEING SUBMITTED TO THE RELEVANT TRIBUNAL OR DURING THE PROCEEDINGS FOR REASONS RELATED TO A HIGHER INTEREST OR TO SECURITY AND STABILITY.

ARTICLE NINE

FIRST: THE PRESIDENCY COUNCIL SHALL APPROVE UNANIMOUSLY THE EMERGENCY DECISIONS AND PROCEDURES. THE INTERIM NATIONAL CONSULTATIVE ASSEMBLY HAS THE RIGHT TO MONITOR THE EXECUTION OF SUCH PROCEDURES.

SECOND: THE PRIME MINISTER'S DECISIONS AND PROCEDURES ARE SUBJECT TO REVIEW BY THE COURT OF CASSATION AND THE TWO COURTS OF CASSATION IN THE PROVINCE OF KURDISTAN REGARDING EMERGENCY PROCEDURES IN ITS AREAS. THE SUPREME FEDERAL COURT WHICH HAS THE RIGHT TO ABROGATE SUCH DECISIONS AND PROCEDURES AND TO RENDER THEM INVALID OR ILLEGAL OR TO APPROVE SUCH DECISIONS AND PROCEDURES TAKING INTO CONSIDERATION THE EXCEPTIONAL CIRCUMSTANCES UNDER WHICH THESE DECISIONS AND PROCEDURES WERE ISSUED.

ARTICLE TEN

THE PRIME MINISTER SHALL DECLARE, WITH THE APPROVAL OF THE COUNCIL OF MINISTERS, THE END OF THE STATE OF EMERGENCY AND THE RETURN OF MATTERS TO THEIR NORMAL STATE BY AN ORDER APPROVED UNANIMOUSLY BY THE PRESIDENTIAL COUNCIL, AND HIS AUTHORITY TO ISSUE EMERGENCY DECISIONS AND PROCEDURES AND APPEARANCES SHALL COME TO AN END.

ARTICLE ELEVEN

THE PRIME MINISTER CANNOT ABROGATE THE TRANSITIONAL ADMINISTRATIVE LAW IN WHOLE OR IN PART, OR IMPOSE PUNITIVE ACTIONS.

ARTICLE TWELVE

NO ARTICLE IN THIS ORDER CAN BE USED TO DELAY ELECTIONS ACCORDING TO THE TIMETABLE SPECIFIED IN THE TRANSITIONAL ADMINISTRATIVE LAW. THE IRAQI INTERIM GOVERNMENT MUST FULFILL ITS PRINCIPAL OBLIGATION OF PROVIDING THE APPROPRIATE ENVIRONMENT FOR HOLDING ELECTIONS ON TIME.

ARTICLE THIRTEEN

THIS LAW BECOMES EFFECTIVE ON THE DATE IT IS ISSUED, AND WILL BE PUBLISHED IN THE OFFICIAL GAZETTE.

THE JUSTIFYING CAUSES:

IN VIEW OF THE CRITICAL SECURITY CONDITIONS AND THE SERIOUS CONSEQUENCES THAT ARE STILL BESIEGING IRAQ DURING THIS PERIOD AND THE FIRM NECESSITY TO COUNTER TERRORISTS AND LAW BREAKERS, AND PURSUANT TO THE COMMITMENT OF THE IRAQI INTERIM GOVERNMENT TO PROTECT THE RIGHT OF THE CITIZENS TO A DIGNIFIED FREE EXISTENCE, TO GUARANTEE THEIR POLITICAL

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TO HOLD FREE DEMOCRATIC ELECTIONS AS PRESCRIBED IN THE TRANSITIONAL ADMINISTRATIVE LAW, AND IN SUPPORT OF THE RULE OF LAW, AND THE INDEPENDENCE OF THE JUDICIARY, ITS EFFECTIVENESS AND ITS MONITORING, AND TO PREVENT THE EXCESSIVE USE OF FORCE AND THE ABUSE OF AUTHORITY UNDER EXCEPTIONAL CIRCUMSTANCES, AND FOR OTHER KNOWN REASONS, WE ISSUED THIS ORDER.

END TEXT OF EMERGENCY LAW.

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